IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8439 of 1999

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYANTILAL TRIBBHOVANDAS PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR DN PANDYA for Petitioner(s) : 1,
MR DIPEN DESAI AGP for Respondents - State.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 07/05/2007

ORAL JUDGMENT

1. Heard Mr.D.N. Pandya, learned counsel for the petitioner and Mr.Dipen Desai, learned Assistant Government Pleader for the respondents – State.

2. The petitioner, by this writ application seeks to challenge

correctness, validity and propriety of the orders dtd.29/31-12-1994 passed by the Dy.Collector, (Stamp Valuation Department), Bharuch directing the petitioner to pay additional stamp duty in sum of Rs.57,160=00 and penalty equivalent to the deficit stamp duty so also the order dtd.20/7/1999 passed by the Chief Controller (Revenue), Gujarat State, Gandhinagar in Revision being Sr.No.Stamp/Legal/Case No.43/98 confirming order passed by the Dy.Collector and dismissing the revision filed by the present petitioner.

3. Undisputedly, Bank of Baroda, Bharuch filed a Civil Suit against Shri Govardhan Cooperative Khandsari Udyog Ltd., Jagadia, District Bharuch, which was registered as Special Civil Suit No.77 of 1983. After the suit was decreed, Special Execution Petition No.19 of 1988 came to be filed, the execution was for recovery of Rs.17,24,038=90 ps. The property of Shri Govardhan Cooperative Khandsari Udyog Ltd., Jagadia, was put under attachment and thereafter, the same was offered for sale in auction. Under the Schedule appended to the Execution Application, Shed No.1 bearing 120.38 sq.yards was mentioned, certain other movables were

also referred to in the Schedule. The petitioner had offered a sum of Rs.6,57,000=00 for purchase of the said shed, lease rights over the land and movable machineries. The Court accepted the bid, the auction was confirmed on 11/9/1990 and the sale was confirmed on 27/9/1990. The Court, it appears, in absence of the judgment debtor, executed sale deed in favour of the petitioner. The Court observed that the question of payment of stamp duty on the total price offered by the petitioner auction purchaser would not arise, because the possession of the movable properties was already taken over by the purchaser under Exh.40. From the judgment debtor, the Court observed that the market value of the land was not required to be taken up for consideration because, the land could not be sold as the judgment debtor only had lease hold rights. The Court, accordingly, valued the Shed and lease hold rights for a sum of Rs.2,50,000=00 and executed sale deed over stamps worth Rs.27,000=00. The sale deed was executed on 8/10/1990 / 12/10/1990.

4. When the sale deed was presented before the Sub-Registrar, Jagadia, he found that the sale deed was not

properly valued, stamp duty was not paid in accordance with law, he, therefore, impounded the document and referred the same to the Dy.Collector for proper valuation of the document. The Dy.Collector, in its order dtd.31/12/1994, observed that most of the machineries are fitted with the earth, therefore, everything under the factory building and structure are included and the value of the property would be Rs.6,57,500=00. He accordingly valued the sale for Rs.6,57,500=00 and directed payment of additional stamp duty with penalty. The order, as already observed, has been affirmed by the Chief Controller of the Revenue Authority.

5. The order dtd.31/12/1994 passed by the Dy.Collector, unfortunately, does not take into consideration recitals of the sale deed. The sale deed clearly distinguishes a distinction between movables and immovables. The Court had clearly observed that the valuation of the lease hold rights / shed would be Rs.2,50,000=00 only, because the movables were already received by the present petitioner. In a given case machineries fitted to the earth and if are separately sold and possession is handed over to a purchaser, then he would be entitled to

remove the said machineries. True it is that if the property is sold along with the machineries fitted with the earth, then the said machineries would become immovable property, but if the movables are separately sold and possession is handed over, then, at the time of sale of the immovable property, the cost / auction price of movables cannot be included in the value of the immovable properties.

6. The Civil Court was very candid and categorical in observing that the possession of the movables / machineries was already handed over and the sale deed was in relation to Shed and lease hold rights.

7. The Moment a sale deed is written for a particular property, then only that property is required to be valued. In the present case, unfortunately, the Dy.Collector could not understand the distinction between a sale of the entire unit along with machinery fitted and separate sale of immovable property movables / machineries.

8. Not only that, the Chief Controller, unfortunately, did not

apply his mind to the facts, without appreciation of law. Without understanding the questions raised before it, he simply observed that the Dy.Collector was justified in passing such order. I must record that an authority if has appellate or revisional power, then, it is required to consider the arguments and decide the questions of law and facts. Such an authority, if does not consider these aspects and simply says that order passed by the lower court or tribunal is justified, then, such authority acts in arbitrary, whimsical and capricious manner. A perusal of the order passed by the Chief Controller would show that it is absolutely cavalier.

9. For the reasons stated aforesaid, I must hold that the learned Civil Judge was absolutely justified in valuing the lease hold rights and the Shed for a sum of Rs.2,50,000=00. It is also to be noted that the said valuation is not being challenged by the respondents, but they are only submitting that value of the movables attached with the earth, though sold separately, should be included in the value of the immovable property.

10. For the reasons aforesaid, the impugned orders passed

by the Dy.Collector and the Chief Controller (Revenue) are hereby quashed and set aside. The petition is allowed with costs which is quantified at Rs.5000=00 (Rupees Five Thousand only). The costs to be paid by the State and its officers to the petitioner within a period of 15 days from today.

11. If in compliance / execution of the orders passed by the Dy.Collector, Stamp Duty Valuation Department, Bharuch or the Chief Controller, Revenue, State of Gujarat, Gandhinagar, or as a statutory requirement, any amount has been paid by the petitioner, then, the same shall be refunded to him or to his authorized representative within a period of 20 days from the date of submission of copy of this order.

12. The Sub-Registrar, Jagadia, District Bharuch is hereby directed to register the sale deed sent to him by the Civil Court within a period of 25 days from the date of submission of copy of this order.

(R.S. GARG, J.)

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